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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

vs.

TARGET CORPORATION,

Defendant.

Case No.: 3:18-cv-05802-EMC

~~[PROPOSED]~~ CONSENT DECREE

INTRODUCTION

On September 21, 2018, Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) filed this action pursuant to the Americans with Disabilities Act of 1990 as amended (ADA) and Title I of the Civil Rights Act of 1991. (ECF No. 1) Plaintiff alleged that Defendant Target Corporation (Target) discriminated against John Hayes because of his disability (deafness) by failing to interview and hire him for a Guest Services Team Member (GSTM) position at the Antioch store in October 2014. Target filed an Answer to the EEOC's Complaint on December 21, 2018, denying EEOC's claims in their entirety. (ECF No. 13)

The EEOC and Target (hereinafter, the Parties) want to conclude fully and finally all claims arising out of the above-referenced action, seek to avoid the additional expense, delay, and uncertainty that would result from further litigation of this lawsuit, and agree to the entry of this Consent Decree.

The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record and the applicable law, and now approves this Consent Decree in its entirety.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. GENERAL PROVISIONS

A. This Court has jurisdiction over the subject matter and the Parties to this action, *EEOC v. Target Corporation*, Case No. 3:18-cv-05802-EMC (N.D. Cal.). This Court will retain jurisdiction over this Decree for all purposes until expiration of Target's obligations as set forth herein.

B. This Consent Decree comprises the full and final resolution of all claims pled in the Complaint and constitutes a complete resolution of all claims of discrimination based on the allegations in EEOC Charge No. 555-2015-000104 (*John Hayes v. Target Corporation*) (the Charge).

C. This Consent Decree does not affect the EEOC's right to process any charges, other than the Charge filed by Mr. Hayes, that may be pending before the agency that are not covered by this Decree or future charges that may be filed against Target, its subsidiaries or related entities, and

1 does not affect the EEOC's right to seek relief and/or commence civil actions on any such charges.

2 **D.** No waiver, modification, or amendment of any provision of this Consent Decree shall
3 be effective unless made in writing and approved by all Parties to this Decree, and any substantive
4 change, modification or amendment of any provision of this Consent Decree shall also require
5 approval by the Court.

6 **E.** Defendant shall provide prior written notice to any potential purchaser of Target
7 Corporation's business, or a purchaser of all or a portion of Defendant's assets, and to any other
8 potential successor, about this lawsuit, the allegations raised in the complaint, and the existence and
9 contents of this Consent Decree during the term of this Consent Decree.

10 **F.** Nothing in this Consent Decree shall be construed as an admission of liability by
11 Target. Target maintains that it fully complies with the ADA, including requirements to reasonably
12 accommodate deaf and hard of hearing applicants and employees.

13 **G.** This Consent Decree is final and binding upon Target, its parents, subsidiaries,
14 officers, directors, management, human resources personnel, successors and assigns, and shall
15 become effective upon its entry by the Court.

16 **H.** Each Party shall bear its own costs and attorney's fees.

17 **II. GENERAL INJUNCTIVE PROVISIONS AGAINST DISABILITY DISCRIMINATION**
18 **AND RETALIATION**

19 **A.** Target and its officers, employees, and successors and assigns, are enjoined from
20 unlawfully discriminating against applicants and/or employees based on disability, including failing
21 or refusing to hire a qualified applicant for employment based on disability.

22 **III. SPECIFIC INJUNCTIVE RELIEF**

23 **A. POLICIES**

24 Throughout the duration of this Decree, Target shall maintain the policies and procedures
25 regarding applicants' need or request for a reasonable accommodation, described below in
26 Sections III.A.1-5, at all of its stores nationwide with the exception of Section III.A.3.a.4, which
27 applies to Store 1819 only. The goal of the policies and procedures is to provide for full compliance
28 with the ADA and to allow a disabled applicant and/or employee an equal opportunity to compete

1 for open positions. Target shall submit its applicable policies to the EEOC within thirty (30) days of
 2 entry of this Decree.

3 **1. ADA Compliance**

4 Throughout the duration of this Decree, Target's policies and procedures shall maintain an
 5 explicit prohibition against discrimination based on disability and explain to applicants and
 6 employees their rights and responsibilities under the ADA. Target shall also maintain anti-
 7 discrimination policies that include provisions which prohibit retaliation against an individual for
 8 engaging in protected EEO activity.

9 **2. Notice to Applicants**

10 Throughout the duration of the Decree, Target shall maintain a mechanism to provide job
 11 applicants with means to request reasonable accommodations during the hiring process. Target's
 12 website shall maintain language informing applicants seeking assistance or a reasonable
 13 accommodation during the application process that they can request an accommodation in person at
 14 a store or distribution center or may contact Guest Relations by calling a telephone number provided
 15 on Target's website. At a minimum, Target shall include the following language on its job postings
 16 and job applications:

17 (a) **Job Posting:** "Target will provide reasonable accommodations (such
 18 as a qualified sign language interpreter or other personal assistance) with the application process
 19 upon your request as required to comply with applicable laws. If you have a disability and require
 20 assistance in this application process, please visit your nearest Target store or Distribution Center or
 21 reach out to Guest Services at 1-800-440-0680 for additional information."

22 (b) **Application:** "Target is committed to accommodating applicants who
 23 need assistance in completing a job application. If you need an accommodation, please contact
 24 Target at 1-800-440-0680 and Target will arrange for assistance in completing the application.
 25 Absent a need for accommodation or translation services, however, applicants should complete their
 26 application without outside assistance. By submitting this application, you verify that you are aware
 27 of this policy and that unless an accommodation or translation services were required, you are the
 28 individual who is applying for the job and you have personally completed the application."

1 **3. Reasonable Accommodation Policies and Procedures**

2 **(a)** Throughout the duration of this Decree, Target shall maintain
 3 procedures and policies that: (1) provide step by step guidance regarding the process to address a
 4 request for reasonable accommodation including the interactive process, review of the request, and
 5 an individualized assessment of the request by a person or persons with knowledge and appropriate
 6 training, as described below in Section III.B in the requirements of the ADA; (2) advise all personnel
 7 involved in determining reasonable accommodations that they should not make assumptions
 8 regarding whether an accommodation is needed or the type of accommodation that would be
 9 effective; (3) allow applicants to appeal any denial of an accommodation request or rejection of hire
 10 by calling Target at 1-800-440-0680; (4) include a requirement for retaining all documents submitted
 11 by an employee or applicant concerning a request for reasonable accommodation at Store 1819 as
 12 well as any documents or opinions that Target relied on if it denies the employee's or applicant's
 13 request for a reasonable accommodation at Store 1819; (5) include information advising employees
 14 of their obligation to comply with the aforementioned policies and procedures; and (6) inform
 15 employees that any violation of the policy will result in appropriate discipline up to and including
 16 termination.

17 **(b)** During its recruitment and hiring of deaf and hard of hearing (HOH)
 18 applicants who seek or require accommodation, Target shall engage in the interactive process to
 19 determine whether a reasonable accommodation will be effective for the applicant.

20 **(c)** Once Target has hired a deaf or HOH individual, it shall engage in the
 21 interactive process as necessary to ensure that the employee is able to enjoy all the benefits of
 22 employment, including access to reasonable accommodations that allow participation in important
 23 personnel meetings (examples include performance evaluations and disciplinary actions).

24 **(d)** Throughout the duration of this Decree, Target shall maintain a policy
 25 of granting reasonable accommodations requested by deaf and hard of hearing employees, including
 26 reasonable accommodations necessary to allow those employees to communicate regarding changes
 27 in work schedules and other terms or conditions of employment.

28 **(e)** Within one hundred (100) days of entry of this Decree, Target shall

1 consult with one or more non-profit organizations that specialize in providing services to deaf and
 2 HOH individuals to obtain information and resources regarding the scope of potential
 3 accommodations that Target should consider providing to deaf and HOH employees.

4 (f) Within one hundred ten (110) days of entry of this Decree, Target shall
 5 confirm by declaration from its in-house or outside counsel that it has consulted with the non-
 6 profit(s) as required by the previous Paragraph, III.A.3(e), obtained the requisite information and
 7 resources regarding the scope of potential accommodations for deaf and HOH employees, and
 8 determined the method by which it will inform deaf and HOH employees who request
 9 accommodation of the availability of such accommodations.

10 **4. Policy Dissemination**

11 Target shall maintain a policy regarding the ADA on its intranet website accessible to current
 12 employees and disseminate the policy to new employees during its onboarding or orientation process
 13 within ten (10) days of the employee beginning work, absent extenuating circumstances. All new
 14 employees who receive the policy shall be requested to acknowledge its receipt. Target shall
 15 maintain records reflecting its on-boarding of new employees, which include information about
 16 receipt of the policy referenced in this Paragraph (which is referred to in this document as the
 17 “Accommodating Disabilities Policy”).

18 **5. Future Policy Modifications**

19 In the event that Target materially modifies its Accommodating Disabilities Policy during the
 20 duration of this Decree, Target shall submit to the EEOC for its review and comment the proposed
 21 modifications no later than twenty-one (21) days before adoption. The EEOC will notify Target
 22 within fourteen (14) days of receipt of the proposed modifications if it has any concerns about the
 23 proposed modifications. For purposes of this Paragraph, “material modifications” shall refer to any
 24 modifications to the substantive provisions referenced in Paragraphs III.A.1 through III.A.5.

25 **B. TRAINING**

26 Throughout the duration of this Decree, Target shall provide the training described below in
 27 Sections III.B.1-5 at Store No. 1819.
 28

1 **1. Managers , Supervisors and Hourly HR Employees**

2 **(a)** Within two hundred (200) days of entry of this Consent Decree, Target
3 shall provide ADA training to all Managers, Supervisors, and Hourly Employees in its Human
4 Resources function at Store 1819, consisting of interactive, web-based ADA training to ensure that
5 they understand the ADA, their obligations under the ADA, and the rights it provides to employees.
6 Target shall pay all costs associated with training required by this Decree.

7 **(b)** Newly hired managers, supervisors, and hourly employees in Target's
8 Human Resources function at Store 1819, and those promoted into these positions after the Consent
9 Decree becomes effective, shall receive the ADA training within ninety (90) days of hire or
10 promotion or 200 days of the effective date of this Consent Decree, whichever comes last, absent
11 extenuating circumstances.

12 **2. Annual Training Requirement**

13 Target's ADA training for its managers, supervisors, and Hourly Employees in its Human
14 Resources function at Store 1819 shall be required annually throughout the duration of the Decree.

15 **3. Training Subject Matter**

16 Throughout the duration of this Decree, Target shall maintain a training program that, at a
17 minimum, covers the following: (a) instruction on Target's policies prohibiting discrimination based
18 on disability and concerning reasonable accommodations, which must include sample scenarios
19 specifically related to the hiring and accommodation of deaf applicants and employees; (b) examples
20 of appropriate questions to be used during prescreens and interviews, including consideration of
21 accommodation for applicants with known disabilities, the availability of reasonable
22 accommodations, the means for requesting an accommodation, and instruction as to what to do when
23 an applicant makes such a request for reasonable accommodation or when a hiring manager believes
24 a reasonable accommodation might be warranted; (c) instruction that each participant is responsible
25 for complying with Target's policies on the ADA and reasonable accommodation; and (d) informs
26 each hiring official or participant that he or she is expected to comply with the ADA in executing
27 their job duties.

28 ///

1 **4. Training Attendance**

2 Target shall maintain records of all employees who receive training required by this Decree.
3 Target shall submit a copy of those training records to the EEOC as required by Section III.D.4 of
4 this Decree.

5 **5. Training Materials**

6 Throughout the duration of the Decree, Target shall provide the EEOC with copies of the
7 training materials utilized in training required by this Decree annually on the anniversary of entry of
8 the Decree (or the first business day following that date).

9 **C. POSTING**

10 Target shall post the Notice of the Consent Decree, attached as Exhibit A, within thirty (30)
11 days of entry of this Consent Decree, and it shall remain posted on company bulletin boards located
12 in employee areas at Store No. 1819 in Antioch, California for the duration of the Decree. Should
13 the Notice become defaced, marred or otherwise made unreadable, Target will ensure that new
14 legible copies of the Notice are re-posted. Within thirty (30) days of entry of the Decree, Target
15 shall send the EEOC a certification that it has posted the Notice in compliance with this paragraph.

16 **D. REPORTING**

17 **1.** Annually, on the anniversary of the entry of this Consent Decree, Target shall
18 make the following reports regarding Store No. 1819 in Antioch, CA:

19 **(a)** For each year after the entry of the Decree, Target shall provide the
20 following information for any individual who (a) made a request for reasonable accommodation of a
21 hearing-related disability during the hiring process, (b) was rejected from hire after requesting a
22 reasonable accommodation for a hearing-related disability, or (c) complained that they were rejected
23 from hire due to discrimination based on a hearing-related disability:

24 **(1)** A unique numerical identifier for each individual who meets
25 the description in the preceding paragraph;

26 **(2)** A report of the nature of the request for accommodation, an
27 explanation of any response/action Target took, and a summary of any appeal through
28 Target's 1-800 number;

(3) Name(s) and title of each individual(s) who received and/or addressed a request for accommodation during the hiring process or was involved in processing of an appeal submitted to Target's 1-800 number concerning the denial of a reasonable accommodation or rejection from hire, including an explanation of the role each individual played during the process; and

(4) In response to its review and assessment of the information provided in this Section, the EEOC may subsequently request in writing the identity and most recent address, phone number and email address of individual(s) for whom Target used a numerical identifier. Upon the EEOC's request, Target shall provide the contact information in its possession to the EEOC within fifteen (15) business days.

2. For each reporting period, Target shall verify and confirm by declaration from its in-house or outside counsel that Target has met the posting requirements described in Section III.C.

3. For each reporting period, Target shall verify and confirm by declaration from its in-house or outside counsel that Target has met the training requirements and provided the information about its reasonable accommodation policies, practices and procedures, as provided in Section III.B.

4. For each reporting period, Target shall submit the roster of all employees trained pursuant to the requirements of the Decree, as described in Section III.B.4.

5. Target shall submit all foregoing reports and declarations by email to: EEOC-SFDO_COMPLIANCE@eoc.gov.

E. MONETARY RELIEF

1. In settlement of the EEOC's claims in this lawsuit, Target shall pay the total amount of \$45,000.00 (forty-five thousand dollars and no cents) (Settlement Sum).

2. The proceeds from the Settlement Sum shall be characterized as follows: \$9,000.00 (nine thousand dollars and no cents) shall be characterized as lost wages, for which Target shall make the appropriate withholdings and issue a check and timely IRS Form W-2 to Hayes. Hayes shall provide an IRS Form W-4 to Target within five (5) business days of entry of this Decree

1 to allow Target to make the appropriate withholdings.

2 **3.** Target shall issue a separate check in the amount of \$36,000.00 (thirty-six
3 thousand dollars and no cents) from the Settlement Sum to compensate Hayes for compensatory
4 damages. Target shall make this payment and provide the IRS Form 1099 directly to John Hayes by
5 certified mail, return receipt requested, to an address specified by the EEOC.

6 **4.** The EEOC will provide Hayes' address to counsel for Target within five (5)
7 business days of the entry of the Consent Decree.

8 **5.** Target shall make all Settlement Sum payments within thirty (30) days of the
9 entry of this Consent Decree.

10 **6.** Target shall send a copy of the checks sent to Hayes to [EEOC-](mailto:SFDO_COMPLIANCE@eoc.gov)
11 SFDO_COMPLIANCE@eoc.gov within three (3) days after they are mailed to Hayes. Target will
12 issue the IRS Forms W-2 and 1099 to Hayes within the time period required by the IRS.

13 **7.** Target will not condition the receipt of individual relief on Hayes's agreement
14 to (a) maintain as confidential the terms of this decree, (b) waive his statutory right to file a charge
15 with any federal or state anti-discrimination agency, (c) release his rights under any law other than
16 the ADA, or (d) waive his right to apply for a position with the Target in the future.

17 **IV. DURATION OF CONSENT DECREE AND CONTINUED JURISDICTION**

18 **A.** This Court shall retain jurisdiction over this action during the duration of this Consent
19 Decree for the purpose of entering all orders, judgments and decrees that may be necessary to
20 implement the relief provided herein. The procedures described below are not intended to diminish
21 this Court's inherent power to enforce any provision of this Decree.

22 **B.** This Consent Decree shall expire three (3) years after its entry by the Court, provided
23 that Target has complied with the terms of this Decree. Target will be deemed to have complied
24 substantially if the Court has not made any findings or orders during the term of the Consent Decree
25 that Target has failed to comply with any term of this Decree.

26 **C.** If the EEOC has reason to believe that Target has failed to comply with any provision
27 of this Decree, the EEOC may petition or may bring an action before this Court to enforce the
28 Decree. Prior to initiating such petition or action, the EEOC will notify counsel for Target, in

1 writing, of the nature of the alleged breach of the Decree. Target shall have sixty (60) days from
 2 receipt of the EEOC's written notice of the alleged breach to resolve or cure the alleged material
 3 breach. The sixty (60) day period following written notice shall be used by the parties in good faith
 4 to resolve the issue. If sixty (60) days have passed with no resolution or agreement to extend the
 5 time further, the EEOC may petition or bring an action before this Court for compliance with this
 6 Decree. If the EEOC petitions the Court and the Court finds Target to be in substantial violation of
 7 the terms of the Decree, the Court may extend the duration of the Consent Decree.

8 **V. MODIFICATION AND SEVERABILITY OF THE DECREE**

9 The Parties shall use their best efforts to support and defend this Decree from any legal
 10 challenge whether by appeal, collateral attack, or objection. Whenever possible, each provision of
 11 this Decree will be interpreted in such a manner as to be valid and enforceable; provided, however,
 12 that in the event that, subsequent to the Court's entry of the Decree, any provision of this Decree
 13 should be determined to be or rendered unenforceable on collateral review, all other provisions and
 14 terms of this Decree, and the application thereof to all persons and circumstances subject thereto,
 15 will remain unaffected to the extent permitted by law.

16 Dated: March 23, 2020

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION

18 Sharon Fast Gustafson
 General Counsel

19 James Lee
 Deputy General Counsel

21 Gwendolyn Young Reams
 Associate General Counsel

24 By: /s/ Roberta Steele
 ROBERTA STEELE
 Regional Attorney
 San Francisco District Office
For Plaintiff EEOC

27 By: /s/ Marcia Mitchell
 MARCIA MITCHELL
 Supervisory Trial Attorney
 San Francisco District Office

For Plaintiff EEOC

By: /s/ Debra Smith
DEBRA SMITH
Senior Trial Attorney
San Francisco District Office
For Plaintiff EEOC

Dated: March 23, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/ Elizabeth A. Falcone
ELIZABETH A. FALCONE
*Attorneys for Defendant TARGET
CORPORATION*

LOCAL RULE 5-1(i)(3) ATTESTATION

I, Elizabeth A., Falcone, am the ECF User whose identification and password are being used to file this [PROPOSED] CONSENT DECREE. In compliance with Civil Local Rule 5-1(i), I hereby attest that Debra Smith and Plaintiff's counsel have concurred in this filing.

DATE: March 23, 2020

By: /s/ Elizabeth A. Falcone
Elizabeth A. Falcone
OGLETREE, DEAKINS, NASH, SMOAK
& STEWART
Counsel for Defendant Target Corporation

IT IS SO ORDERED.

DATED: March 27, 2020



HON. EDWARD M. CHEN
United States District Court Judge

42277131.1

EXHIBIT A
NOTICE TO ALL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in *EEOC v. Target Corporation*, Case No.: 3:18-cv-05802-EMC, resolving a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) against Target Corporation (Target or Defendant). The EEOC is the federal agency responsible for enforcing laws against discrimination in employment.

Title I of the Americans with Disabilities Act of 1990, as amended (ADA), covers individuals who have a physical or mental impairment that substantially limits one or more major life activities, who have a record of such impairment, or who are regarded as having such impairment. The ADA prohibits discrimination against individuals with disabilities in all employment practices, including job application procedures, post-offer and other employment-related medical evaluations, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. The ADA also requires employers to provide reasonable accommodations that enable people with disabilities to perform their jobs. The ADA also requires employees to maintain the confidentiality of its employee's medical records and to keep such medical records separate and apart from the employee's other personnel documents. The ADA further prohibits retaliation against employees or applicants who avail themselves of the rights provided by the ADA by engaging in protected activities such as filing a charge of discrimination and/or testifying or participating in an investigation conducted by the EEOC.

To resolve this case, Target and the EEOC have entered into a Consent Decree through which Defendant shall maintain its compliance with the ADA in all respects, and specifically by not discriminating against any applicant or employee due to his or her disability and by documenting and reporting the requests for hearing-related accommodation that it receives during the hiring process at Store No. 1819 in Antioch, California and the steps it takes to provide or deny the accommodation on an annual basis throughout the duration of the Decree. Defendant also shall maintain its current anti-retaliation provisions and will not take any adverse employment actions against applicants or employees for requesting a reasonable accommodation. As part of the terms of the Consent Decree, Defendant shall also provide training to managers, supervisors and Human Resources staff regarding the ADA at its Antioch store.

If you have a complaint of employment discrimination or questions regarding laws prohibiting employment discrimination, you may seek assistance from the EEOC's Oakland Local Office at 1301 Clay Street, Suite 1170N, Oakland, CA 94612-5217 or by calling (510) 637-3230. General information about the EEOC and the laws enforced by the EEOC may be obtained on the Internet at www.eeoc.gov or by calling 1-800-669-4000 (TDD 1-800-669-6820).

[Name of posting official]

Date Posted:

This Notice shall remain prominently posted at _____ until [month and day], year. This Office Notice shall not be altered, defaced, covered or obstructed by any other material.